C.8160

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

S.A.No. 445 /2004

Single Bench

APPELLANT
(DEFFENDENT NO.8)
(RESPONDENT NO.8)

: Smt. Maan Bai @ Bhan Bai W/o Khorbahara Lodhi; Aged about 36 years; R/o Village- Marutola Tah. Khairagarh; District- Rajnandgaon (C.G.)

VERSUS

RESPONDENT
PLAINTIFF

: 1) Bhangi Singh S/o Sukhram Singh Yadav; Aged about 52 years. R/o Village- Sonesarar; Tah.- Khariagarh Dist. Rajnandgaon (C.G.)

No.2 To 8 K
RESPONDENTS
DEFENDANTS

2) Tetku S/o Sanwant Lodhi; Aged about 57 years.

3) Fulu ram S/o Mehtar Lodhi; Aged about 37 years.

4) Samodhi S/o Mehtar Lodhi; Aged about 33 years.

5) Sushila Bai D/o Mehtar Lodhi; Aged about 31 years.

6) Soniya Bai W/o Mehtar Lodhi; Aged about 57 years.

7) Pardeshi S/o Sanwant Lodhi; Aged about 37 years.

8) (A) Smt. Milautin Bai W/o Sukhi Ram Lodhi; Aged about 44 yrs

(B) Sangeeta Bai D/o Sukhi Ram Lodhi; Aged about 21 years.

(C) Chandrika Bai D/o Sukhi Ram Lodhi; Aged about 19 years.

(D) Sunil Kumar S/o Sukhi Ram Lodhi; Aged about 17 years.

(K) Kumari Seema Bai D/o Sukhi Ram Lodhi; aged about 14 yrs

No.8(k) Minor; through natural guardian mother Smt. Milautin Bai

P.R. No. 1974/04
Presented by Shri Aman Sao
dated 2-9-04

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Clerk to A. G. Bilaspur

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W/o Sukhi Ram Lodhi
All R/o Village- Marutola Tah.-
Khairagarh; Distt. Rajnandgaon (CG.)

9) State of M.P. at present State of C.G. through Collector; Rajnandgaon (C.G.)

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE 1908.

valued

XI-HC-78

A.F.R.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A.No. 445/.... **सन् 200** 4

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	13.12.2006 Appellant-Smt. Maan Bai by Shri R. N. Jha, Advocate. Respondent No.1-Bhangi Singh by Shri Rajesh Pandey, Advocate. Respondents No.2 to 8 are absent. Respondent No.9/State by Shri Akhil Agrawal, P.L. Heard. 2. Brief facts are that Tetkuram, the owner in possession of the suit land Kh.No.239 area 1.16 acres situated in village Marutola, Tah. Khairagarh, District Rajnandgaon, had executed a registered sale deed Ex.P.1, in favour of Bhangi Singh on 21.3.1988. Subsequently, Tetkuram sold the suit land on 07.03.1990 in favour of one Sukhiram, defendant No.7. Sukhiram in turn sold the suit land to Smt. Maan Bai, defendant No.8 through registered sale deed on 14.01.1991. Bhangi Singh instituted a Civil Suit No. 62-A of 1992 for a declaration that both sale deeds dated 07.03.1990 and 14.01.1991 were void and did not confer any title to the purchasers since Tetkuram had no subsisting valid title over the suit land on the date of sale. Relief for permanent injunction against the defendants No.1 to 8 was also sought. 3. The defendant No.1-Tetkuram in his written statement paragraph 5 admitted the execution of the registered sale deed on 10.03.1988 but pleaded that the document, though couched as a sale was essentially a mortgage upon a loan of Rs.3,600/- from Bhangi Singh. The learned Civil Judge Class-I, Khairagarh, vide judgment dated 30.08.2000 dismissed the suit on the ground that document Ex.P.1 was a mortgage of the suit land executed by Tetkuram in favour of Bhangi Singh who was never in possession of the suit lands.	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

4. Aggrieved by the said judgment and decree, Bhangi Singh preferred First Appeal No. 35-A/2000 before the Additional District Judge, Khairagarh. Vide judgment and decree dated 03.08.2004, the learned Additional District Judge held that the defendants had failed to establish the collateral nature of the transaction and the registered sale deed dated 21.03.1988 was an outright sale which conferred valid title over the suit lands on Bhangi Singh. It also held that Bhangi Singh was in possession of the suit lands on the date of the suit. On these premises, it reversed the judgment and decree passed by the lower Court and granted a declaration in favour of Bhangi Singh that the document Ex.P.3, dated 07.03.1990 and Ex.P.4 dated 14.01.1991 were sham and not effective and also granted the relief of permanent injunction against defendant No.8-Smt. Maan Bai.

5. The following substantial question of law arises for determination in this Appeal:-

> "Whether a valid title has been transferred in favour of the plaintiff vide sale deed dated 21.03.1988 (Ex.P.1) and the said document has been proved on record?"

6. Shri R. N. Jha, learned counsel for the appellant has placed reliance on **Raj Kumar Rajindra Singh v. Himachal Pradesh and others**[1], **Smt. Ganga Bai v. Smt. Chhabubai**[2], **Naroibam Bira Singh and others v. Waikhom Leirenjao Singh and others**[3], **Chandi Prasad v. Nankibai**[4], **Parvinder Singh v. Renu Gautam and others**[5] **and Subhra Mukherjee and another v. Bharat Coking Coal Ltd. and others**[6] while arguing that the burden initially lies on Bhangi Singh to

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1. AIR 1990 SC 1833 2. AIR 1982 SC 20 3. AIR 1958 Manipur 38
4. 1985 M.P.W.N. (415) 5. (2004) 4 SCC 794 6. (2000) 3 SCC 312

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

prove execution of sale deed by Tetkuram. In view of the recital **"यह बिक्री पत्र ही है रहन पत्र नही है"** in Ex P.1, it was clear that the document Ex.P.1 was a mortgage and not a sale deed. Similarly, non-recital of the demarcation of the suit land in the sale deed also lent support to the above conclusion. Lastly, it was urged that the name of Bhangi Singh was also not mutated over the suit lands.

On the other hand, Shri Rajesh Pandey, learned counsel for respondent No.1 argued in support of the impugned judgment and decree placed reliance on **Uma Bai and another v. Nilkanth Dhondiba Chavan[7], Bhaskar Waman Joshi v. Narayan Rambilas Agrawal[8]** and **K.Simrathmull v. S. Nanjalingiah Gowder[9].**

7. Having heard rival contentions, I am of the considered opinion that there is no merit in this appeal. The execution of registered sale deed by Tetkuram in favour of Bhangi Singh vide Ex.P.1 on 21.03.1988 was not disputed by the defendants. The plaintiff had not only examined himself but had also examined attesting witnesses Atmaram P.W.2 and Ghanaram P.W.4 to prove the factum of an outright sale having been executed by Tetkuram in his favour. There can be no dispute that a person who attacks a transaction as sham, bogus and fictitious must prove the same. Heavy burden was upon the defendants to prove that document Ex.P.1 was in fact a mortgage and not a sale. There is no explanation why Tetkuram did not enter the witness box to rebut the factum of an outright sale vide Ex.P.1 executed by him or to support the contention of the defendants that the document was in fact a mortgage, for the loan taken from Bhangi Singh. Tetkuram was a

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7. (2005) 6 SCC 243 8. AIR 1960 SC 301 9. AIR 1963 SC 1182

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश –५–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

contesting defendant. He was the best person to enter the witness box to show that the document Ex.P.1 was in fact a mortgage and was never intended to be acted upon a sale. Due to non-examination of Tetkuram, the case of defendants falls to the ground.

8. It is also pertinent to note that in the sale deed Ex.P.1, there is no recital of a condition of repurchase. In a mortgage, the debt subsists and right to redeem remains with the debtor. No reason whatsoever was assigned as to why Tetkuram never made any effort after executing the sale deed on 21.03.1988 to redeem the mortgage, if it was so, till he executed the sale in favour of Sukhiram on 07.03.1990. There is nothing on record to show that Tetkuram ever served a notice upon Bhagiram for this purpose.

9. Learned counsel for the appellant has placed before me three circumstances to contend that the document Ex.P.1 was in fact a mortgage. Firstly, it was contended that the recital in the sale deed Ex.P.1 **"यह बिकी पत्र ही है रहन पत्र नही है"** clearly showed that in fact the document was intended to be a mortgage and not a sale. This argument is unacceptable since the recital runs contrary to the contention raised by the learned counsel for the appellant. It is also pertinent to note that the defendants did not cross-examine Bhangi Singh P.W.1 on this point, and therefore, merely on the basis of this recital, no inference can be drawn that the document Ex.P.1 was a mortgage. Secondly, it was urged by the learned counsel for the appellant that the demarcation of the suit land Kh.No.239 area 1.16 acres has not been mentioned in the sale deed. I am of the considered opinion that this by itself does not, in any manner, show that the document was intended to be a mortgage. Lastly, learned counsel for

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

61

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	the appellant contended that Bhangi Singh was not in possession of the suit land, at any point of time and the land was also mutated in the name of Smt. Maan Bai. However, a perusal of the evidence led by the plaintiff Bhangi Singh before the lower Court clearly goes to show that the plaintiff had stated on oath that Ghanaram was cultivating the suit land on his behalf which statement has also been corroborated by Ghanaram P.W.2. So far as mutation of the land in favour of Sukhiram and thereafter in favour of Smt. Maan Bai is concerned, it is of no avail to the defendants for the reason that no title over the suit land was subsisting in Tetkuram on 07.03.1990 as he had transferred a valid title over the suit land to Bhangi Singh through registered sale deed on 21.03.1988 and he could not confer any valid title to Sukhiram by virtue of sale deed dated 07.03.1990 and consequently Sukhiram also could not confer any valid title to Smt. Maan Bai by virtue of sale deed 14.01.1991. In this view of the matter, this contention of the learned counsel for the appellant must also fail. In this view of the matter, the finding recorded by the Additional District Judge, Khairagarh in F.A.No. 35-A of 2000 that sale deed dated 21.3.1988 executed by Tetkuram in favour of Bhangi Singh was an outright sale and conferred valid title to Bhangi Singh is impeccable. Substantial question is accordingly answered in the affirmative. 10. In the result, I find no merit in this appeal, which is accordingly dismissed. No order as to costs. A decree shall be drawn accordingly. Sd/- DILIP RAOSAHEB DESHMUKH Judge	

Anjani

P.T.O.